



Region 8, Mailcode: 8-OC  
U.S. Environmental Protection Agency  
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Denver, Colorado 80202-1129

U.S. Environmental Protection Agency  
Baucus Federal Building  
10 West 15th Street Suite 3200  
Helena, MT 59626

September 11, 2013

**RE: EPA Correspondence w/ Montana DEQ regarding NPDES/MPDES Permitting Program**

Dear FOIA Officers,

Pursuant to the federal Freedom of Information Act (5 U.S.C. § 552 *et. seq.*), Cottonwood Environmental Law Center, Inc. (CELC) is filing this request for information. CELC is a 501(c)(3) non-profit, public interest, public education organization.

Montana is a delegated National Pollution Discharge Elimination System (NPDES) program and has adopted by regulation all of the critical features of the Clean Water Act (CWA) for both permits and water quality standards. Nonetheless, Montana's state agency charged with the responsibility for issuing water quality discharge permits (MPDES) – the Montana Department of Environmental Quality – has failed to meet the statutory time constraints for permit issuance and renewal. CELC formally requests an electronic or hard copy of:

- All formal and informal correspondence between the EPA and the Montana DEQ addressing the MPDES program and the DEQ's failure to meet the requirements/goals of the CWA.
- All audits of the Montana DEQ's MPDES permitting program and any related correspondence or information related to the NPDES/MPDES program or the DEQ's backlog of permits.
- A February 2008 letter from the EPA to the Montana DEQ expressing concern with the DEQ's commitment to the NPDES permit issuance.



- Any formal or informal agreement between the EPA and the DEQ that calls for reducing the DEQ's MPDES permit backlog.
- Any correspondence between the EPA and the DEQ that addresses the potential loss of federal funding or loss of the state's delegated authority to issue NPDES/MPDES permits.
- TIME FRAME: For all bullet points above, this request is limited to documents produced between January 1, 2000 and the present.

To my knowledge, this information is not available from any other federal, state, or public agency that is required to provide it. In addition, the release of this information will not result in financial benefit to CELC or any individuals, groups or organizations.

As you know, the Freedom of Information Act (FOIA) provides that if portions of a document are exempt from release, the remainder must be segregated and disclosed. We expect to receive all non-exempt portions of the documents that we have requested, and ask that you justify any deletions by reference to specific exemptions allowed under the FOIA. CELC reserves the right to appeal a decision to withhold any materials.

I hereby request a fee waiver for all search and duplication fees under the FOIA regulations [5 U.S.C. § 552 (a)(4)(A) and 36 CFR 2.19(c)(1)]. The information requested will benefit the citizens of the United States and is for the purpose of public education and to encourage public debate on important policy issues. The information will also benefit the public by contributing to informal and formal discussions with agencies, such as the Montana Dept. of Environmental Quality.

CELC's water protection campaign aims to protect western waterways through enforcement of the federal Clean Water Act. Part of this campaign requires the gathering and dissemination of compliance information, so that the public is aware of which waterways within their communities are or are not being protected. All of the discharge permits issued by the EPA and respective state agencies involve public participation, including provisions for notice, comment and administrative appeal. However, unless the public is made aware of potential shortcomings on behalf of the agencies charged with protecting their water quality, these avenues for participation are useless. CELC aims to fill this information gap, and this request fulfills that goal.

The requested information will be made available to the general public through CELC's office, shared with CELC's 200+ members and made available to the public online via CELC's website. The requested information will also be disseminated to other membership-based non-profit groups, such as the Montana River Action Network, to share with their members and the general public. Information available through CELC will also be used in press conferences and releases, letter-writing campaigns, policy meetings, regional and national publications, online publications and



public comment procedures. In sum, there is no doubt that the requested information will be disseminated to the general public and will reach a significant number of individuals nationwide.

The language of the FOIA clearly indicates that Congress intended fees not to be a barrier to private individuals or public interest organizations seeking access to government records. In addition, the legislative history of the FOIA fee waiver language indicates that Congress intended a liberal interpretation of the phrase "Primarily benefiting the public." This suggests that all fees are to be waived whenever the release of information contributes to public debate on important policy issues. This has been affirmed by the US Court of Appeals for the District of Columbia, in *Better Government Association v. Department of State*, 780 F. 2d 86 (D.C. Cir., 1986). In that case, the Court found that under FOIA, Congress had explicitly recognized the need for non-profit organizations to have free access to government documents and those government agencies cannot impair this free access by charging duplication or search for FOIA information requests (*Id.* at 89).

Notably, FOIA requires that an agency determine whether to comply with a request for documents **within 20 business days of receipt of the request**. 5 U.S.C. § 552(a)(6)(A)(i). The 20-day deadline is legally-binding requirement. *Natural Desert Ass'n v. Gutierrez*, 409 F.Supp.2d 1237, 1248 (D.Or.2006) (finding Administrative Procedure Act violation for failing to respond to a FOIA request within requisite twenty-day period.).

The importance of FOIA and its mandatory deadlines was recently highlighted by a legal settlement reached between a similar non-profit group, the Buffalo Field Campaign, and the Animal & Plant Health Inspection Service (APHIS). The settlement, filed in Montana federal district court, resolved a complaint by Buffalo Field Campaign alleging that APHIS had improperly withheld government documents and had engaged in a "pattern or practice" of failing to timely respond to public information requests.

I appreciate your help, as well as your timely response with this request.

Thanks very much,

/s/ Andrew Gorder

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